## Tai Foong Lam v Hamdi Abdullah & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02-(NCVC)633 OF 2011
ZAINUN ALI JCA, RAMLY ALI AND ZAHARAH IBRAHIM JJCA
14 AUGUST 2012

*Partnership — Partnership property — Name of dissolved partnership — High Court order allowed first and second respondents to use name of dissolved partnership 'Abdullah and Chan' — No agreement that name 'Abdullah Chan' was to be divided between partners — Appellant and third and fourth respondents objected to first and second respondent's use of dissolved firm's name — Whether High Court judge misdirected himself by holding that first and second respondents should be allowed to practice under name and style of 'Abdullah Chan' — Whether partnership name remained as asset of partnership — Whether goodwill in name 'Abdullah Chan' was jointly owned by all partners of dissolved firm — Whether first and second respondents had right to continue using their surnames in their intended new firm*

The appellant and the four respondents practised as partners in a legal firm known as 'Abdullah & Chan' ('the partnership'). There was no partnership agreement entered into by the parties. When the relationship between the partners deteriorated, the appellant issued a notice of dissolution dated 15 October 2010 to dissolve the partnership with effect from 31 December 2010. As a result, the first and second respondents initiated legal proceedings by way of originating summons. The trial judge declared, inter alia, that the dissolution of the partnership became effective on 31 December 2012 and a Dissolution Committee was formed to have the partnership assets listed and sold. In addition to these matters, the trial judge had to also determine the issue as to whether the first and second respondents could practice under the name and style of 'Abdullah Chan'. The trial judge held that the first and second respondents should be allowed to practice under the name and style of 'Abdullah Chan' with effect from 2 January 2011, subject to the Bar Council's approval. The High Court order also required the first and second respondents to write to all their clients notifying them that the new firm of 'Abdullah Chan' had no resemblance to the former firm. The appellant and the third and fourth respondents, who were joined as interveners, were aggrieved by the decision of the High Court and filed the present appeal. The appellant and the third and fourth respondents objected to the first and second respondents' use of the dissolved firm's name of 'Abdullah Chan'. They submitted that the trial judge had erred in taking into consideration irrelevant considerations such as whether the use of the name 'Abdullah Chan' was likely to cause confusion and mislead the public and failing to consider the legal principle that the goodwill

in the name 'Abdullah Chan' being jointly owned by all five partners of the dissolved partnership could not be sold or utilised by any partner of the firm without the consent of all the partners. The appellant and the third and fourth respondents thus argued that the first and second respondents could not use the name 'Abdullah Chan' for themselves even though the names Abdullah and Chan were their respective surnames.

**Held,** allowing the appeal with no order as to costs:

(1) The test of whether a partner could use the name of the partnership after the dissolution of the firm depended on whether the goodwill of the partnership had been assigned and not whether the name of the dissolved firm carried the name of the partner who was objecting to the use of the name. In the present case, there was no agreement or any assignment or sale of the goodwill in the name 'Abdullah Chan' in the first and second respondents' favour. Thus, the goodwill belonged to all the partners of the dissolved firm of 'Abdullah Chan', ie the appellant and the first to fourth respondents. As such, the first and second respondents were not entitled to use the name 'Abdullah Chan' for themselves (see paras 32 & 45).

(2) The High Court order, which 'appropriated' to the first and second respondents a partnership asset that belonged to all five partners of the dissolved firm of 'Abdullah Chan' offended the principle of 'the right of the other partners to have the goodwill sold for the common benefit of all'. The appellant and the third and fourth respondents were legally entitled to have the partnership assets including the goodwill sold for their common benefit. In the circumstances, the trial judge in the present case had not addressed his mind to the critical issues at hand but instead focused on irrelevant issues such as the first and second respondents' right to continue using their surnames in their intended new firm. By so doing the trial judge had misdirected himself (see paras 47, 59–61).

**[Bahasa Malaysia summary**

Perayu dan keempat-empat responden beramal sebagai rakan kongsi di sebuah firma guaman yang dikenali sebagai 'Abdullah & Chan' ('perkongsian tersebut'). Tiada perjanjian perkongsian yang dimeterai antara pihak-pihak. Apabila hubungan sesama rakan kongsi menjadi buruk, perayu mengeluarkan notis pembubaran bertarikh 15 Oktober 2010 untuk membubarkan perkongsian tersebut, berkuat kuasa pada 31 Disember 2010. Akibatnya, responden pertama dan kedua telah memulakan prosiding undang-undang melalui saman pemula. Hakim bicara mengisytiharkan, antara lain, bahawa pembubaran perkongsian tersebut berkuat kuasa pada 31 Disember 2012 dan sebuah Jawatankuasa Pembubaran telah ditubuhkan untuk menyenaraikan dan menjual aset-aset perkongsian. Selain daripada hal-hal perkara ini, hakim juga perlu menentukan isu sama ada responden pertama dan kedua boleh

beramal di bawah nama dan gaya 'Abdullah Chan'. Hakim bicara memutuskan bahawa responden pertama dan kedua harus dibenarkan untuk beramal di bawah nama dan gaya 'Abdullah Chan' mulai 2 Januari 2011, tertakluk kepada kelulusan Majlis Peguam. Mahkamah Tinggi juga memerintahkan responden pertama dan kedua agar menulis kepada anak-anak guam mereka, memberitahu kesemuanya bahawa firma baru 'Abdullah Chan' tidak sama dengan firma yang lama. Perayu dan responden ketiga dan keempat, yang bergabung sebagai pencelah, terkilan dengan keputusan Mahkamah Tinggi dan memfailkan rayuan ini. Perayu dan responden ketiga dan keempat membantah penggunaan nama firma yang dibubarkan iaitu 'Abdullah Chan' oleh responden pertama dan kedua. Mereka menghujahkan bahawa hakim bicara telah terkhilaf dalam mempertimbangkan pertimbangan yang tidak relevan seperti sama ada penggunaan nama 'Abdullah Chan' mungkin menyebabkan kekeliruan dan memberi gambaran yang salah kepada orang ramai dan gagal untuk mempertimbangkan prinsip undang-undang bahawa nama baik di bawah nama 'Abdullah Chan' yang dimiliki bersama oleh kelima-lima rakan kongsi perkongsian yang dibubarkan tidak boleh dijual atau digunakan oleh mana-mana rakan kongsi firma tersebut tanpa persetujuan rakan kongsi yang lain. Perayu dan responden ketiga dan keempat menghujahkan bahawa responden pertama dan kedua tidak boleh menggunakan nama 'Abdullah Chan' untuk diri mereka walaupun nama-nama Abdullah dan Chan merupakah nama keluarga mereka masing-masing.

**Diputuskan,** membenarkan rayuan tanpa perintah terhadap kos:

(1) Ujian sama ada rakan kongsi boleh menggunakan nama perkongsian selepas pembubaran firma bergantung kepada sama ada nama baik perkongsian telah diberikan dan bukan sama ada nama firma yang telah dibubarkan membawa nama rakan kongsi yang membantah penggunaan nama tersebut. Dalam kes ini, tiada perjanjian atau apa-apa penyerahhakkan atau penjualan nama baik di bawah nama 'Abdullah Chan' yang memihak kepada responden pertama dan kedua. Oleh itu,nama baik dimiliki oleh semua rakan kongsi firma 'Abdullah Chan' yang telah dibubarkan, iaitu perayu dan responden pertama hingga responden keempat. Oleh itu, responden pertama dan kedua tidak berhak untuk menggunakan nama 'Abdullah Chan' untuk diri mereka (lihat perenggan 32, 37–38).

(2) Perintah Mahkamah Tinggi, yang 'memberikan' responden pertama dan kedua, aset perkongsian yang dimiliki oleh kelima-lima rakan kongsi firma 'Abdullah Chan' yang telah dibubarkan melanggar prinsip 'hak rakan-rakan kongsi lain untuk menjual nama baik untuk manfaat bersama semua'. Perayu dan responden ketiga dan keempat berhak di sisi undang-undang, untuk mempunyai aset perkongsian termasuk menjual nama baik untuk faedah mereka bersama. Dalam hal keadaan ini, hakim bicara dalam kes ini tidak mengarahkan fikirannya kepada isu-isu

penting tetapi sebaliknya memberi tumpuan kepada isu-isu yang tidak relevan seperti hak responden pertama dan kedua untuk terus menggunakan nama keluarga masing-masing di firma baru mereka. Dengan berbuat demikian, hakim bicara telah tersalah arah dirinya (lihat perenggan 47, 59–61).]

**Cases referred to**

*Burchell v Wilde* [1900] 1 Ch 551, CA (distd)
*Chia Foon Tau & Anor (suing as the executor of the estate of Chong Tzu Chieh, deceased) v Lim Pey Lin* [1997] 5 MLJ 68, HC (refd)
*Dato' Gopal Sri Ram v Dato' C Vijaya Kumar & Ors* [2006] 6 MLJ 328, HC (refd)
*Morgan v Forster* (1976) 69 DLR (3d) 28 (refd)
*Ng Teck Sim Colin v Teh Guek Ngor Engelin & Anor* [1995] 2 SLR 380 (refd)
*Sukhinderjit Singh Muker v Arumugam Deva Rajah* [1998] 2 MLJ 117; [1998] 2 CLJ 110, HC (refd)

**Legislation referred to**

Legal Profession Act 1976 s 85
Partnership Act 1961 ss 40, 44

**Appeal from:** Originating Summons No S-24 NCVC–742 of 2010 (High Court, Kuala Lumpur)

*Ambiga Sreenevasan (Conrad Young with her) (Sreenevasan Young) for the appellant.*
*Gideon Tan (Gideon Tan Razali Zaini) for the first and second respondents.*
*Mohd Arief Emran bin Arifin (Gideon Tan Razali Zaini) for the third respondent.*

**Zainun Ali JCA (now FCJ) (delivering judgment of the court):**

**[1]** This is an appeal by the appellant against the High Court's decision dated 7 February 2011 which ordered that the respondents are at liberty to apply to practice under a new firm name of Messrs 'Abdullah Chan' with effect from 2 January 2011 subject to the Bar Council's approval, that they are to cause their said new firm of Messrs Abdullah Chan to write to all their clients notifying them that appellant Messrs Abdullah Chan is a new firm with no links to the appellant. The appellant opposed the said order. So did the third and fourth respondents who are joined as interveners.

THE BRIEF FACTS

**[2]** This was how it all begun. A group of lawyers decided to form a partnership naming their legal firm 'Abdullah Chan & Co' ('the firm'). This

partnership comprised the first and second respondents, the appellant and the third and fourth respondents. No agreement or deed was entered into by the said parties for the duration of the period. After sometime the relationship between the partner deteriorated sharply. It culminated in the present action whereby the appellant issued a notice of dissolution dated 15 October 2010 to dissolve the said former partnership with effect from 31 December 2010.

**[3]** After the issue of the said notice of dissolution, the first and second respondents applied to practice under the name and style of 'Abdullah Chan' and the commencement date shall be 2 January 2011. The first and second respondents obtained a court order to this effect.

**[4]** There were two main issues placed before the court for its determination ie the use of the name 'Abdullah Chan' which are the surnames of the first and second respondents and for the proper management of the dissolution of the partnership.

**[5]** The matter came up for full hearing before the learned trial judge in the High Court on the 28 January 2011. The affidavits filed in this case clearly showed the level of distrust and lack of faith that the relationship between the parties had plummeted to. However fortunately the court was spared going through a fact finding exercise when the wisdom of counsel for all parties involved prevailed and it was agreed that the dissolution of the said firm had taken place on 31 December 2010.

**[6]** The learned trial judge made an order in terms of Annexure A on 28 January 2001 as follows:

(a) the partnership of Abdullah Chan be declared to have been dissolved as at 31 December 2010;

(b) a Dissolution Committee ('Dissolution Committee') shall be formed to carry out the dissolution of the partnership of Abdullah Chan in accordance with s 40 of the Partnership Act 1961; and

(c) The Dissolution Committee shall consist of:

(i) an advocate and solicitor to be agreed by parties, and failing such agreement, to be appointed by this honorable court ('monitoring solicitor'), one Mr Lean 47 Chee Seng of Messrs Lean Oh & Associates;

(ii) one of the appellants.

The monitoring solicitor and the said Mr Lean Chee Seng shall be jointly

A referred to as the joint chairmen of the Dissolution Committee. The joint chairmen shall be the only decision makers in respect of matters set out in para 6 herein below.

B **[7]** On 7 February 2011, the court heard arguments on the use of the name 'Abdullah Chan'. On the same day, the court had ordered that the first and second respondents are at liberty to apply to practice under a new firm of Messrs Abdullah Chan effective from 2 January 2011, subject to the Bar Council's approval for the first and second respondents to do so and they are to C cause the said new firm of Messrs Abdullah Chan to write to all their clients notifying them that the Messrs Abdullah Chan is a new firm with no links to the appellant and the third and fourth respondents.

D **[8]** Dissatisfied with the decision, the appellant appeal to the Court of Appeal.

THE FIRST AND SECOND RESPONDENTS

E **[9]** The first and second respondents contended that they as partners of the erstwhile legal firm have the right to practice under the name of Messrs Abdullah Chan and/or use their surnames since their briefs were mainly corporate and non contentious matters and there was need for some continuity in respect of their clients' briefs.

F **[10]** In the absence of a partnership agreement upon dissolution of partnership, each partner is entitled to use the firm's name and to carry on business under the style of the said partnership as long as it does not expose the firm's former partners to any liabilities.

G **[11]** Furthermore, after dissolution of the partnership, a partner still has continuing authority to bind the firm for purposes of winding up the affairs of the partnership and an obligation to complete all unfinished transactions which have already begun at the time of the dissolution.

H

THE APPELLANT AND THE THIRD AND FOURTH RESPONDENTS (THE INTERVENERS)

I **[12]** The argument of the appellant and the interveners are that since the name 'Abdullah Chan' forms part of the goodwill of the said firm, the first and second respondents are not entitled to use the name and the court should restrain its use by the first and second respondents pending the final dissolution of the said firm.

FINDINGS OF THE LEARNED TRIAL JUDGE

**[13]** It is to be noted that the appellant and the interveners had set up a new practice styled as 'Gan Associates' and some of the litigation files in the former firm had been taken over by them as their clients wished them to continue to act on their behalf.

**[14]** The court referred to s 85 of the Legal Profession Act 1976 where the Bar Council is only concerned to see that the name 'Abdullah Chan' is not likely to be confused with an existing registered firm name or is likely to mislead the public.

**[15]** The court views that since 'Abdullah Chan' as a firm had been dissolved by the court and that the appellant and the interveners are practicing under the name and style of 'Gan Associates', no confusion would arise with the new firm of 'Abdullah Chan' set up by the first and second respondents.

**[16]** As to the question of whether the public would be misled if the first and second respondents were allowed to practice under the name 'Abdullah Chan', the court held that it would not. At any rate the court had placed several safeguards into the order to ensure that the public is not misled and accordingly ordered the first and second respondents to apply to the Bar Council to practice under the name and style of 'Abdullah Chan' a new firm, commencing from 2 January 2011 with no links to the defendant and the interveners.

**[17]** The court took the view that the Bar Council in exercising its powers under s 85 of the Legal Profession Act could still reject the application of the first and second respondents to practice under the name and style of 'Abdullah Chan' and that the first and second respondents are not precluded from exercising their right of appeal to the High Court.

**[18]** The learned trial judge also held that the clients are well aware of the personalities behind the new firm and that the same bears no resemblance to the former firm. Corporate and institutional clients would check the professional identity that the first and second respondents new firm carries which would distinguish the old firm from the proposed new firm. Further the order requires the first and second respondents to notify all the clients that the new firm of Abdullah Chan bears no resemblance to the former firm. Thus the High Court held that the prohibitions against the use of the name by the first and second respondents of Abdullah Chan for their new firm as provided for in s 85 of the Legal Profession Act do not apply.

A Aggrieved by the abovesaid decision of the High Court, the appellants filed his appeal, hence the appeal before us. The appellant's grounds of appeal are as follows.

**[19]** The learned trial judge had erred in:

B

(a) taking into account the irrelevant consideration of whether the use of the name 'Abdullah Chan' by the first and second respondents in their intended new partnership/firm was likely to cause confusion with the dissolved partnership/firm of 'Abdullah Chan' and in further holding that it would not cause confusion;

C

(b) taking into account the irrelevant consideration of whether the use of the name 'Abdullah Chan' by the first and second respondents in their intended new partnership/firm was likely to mislead the public and in further holding that it would not mislead;

D

(c) failing to consider and hold that the goodwill in the name 'Abdullah Chan' belonged to all five partners of the dissolved partnership/firm and in the absence of an agreement to the contrary, no partner thereof had a right to use the partnership/firm name; and

E

(d) allowing the first and second respondents' application to apply for the use of the name 'Abdullah Chan' and in making the orders that he did.

An interesting twist to this appeal presented itself with the filing of cross-appeals by the interveners.

F

NOTICE OF CROSS-APPEAL

**[20]** The interveners contend that the decision of the learned trial judge on 7 February 2011 ought to be varied to the extent and on the grounds that:

G

(a) the order of the learned trial judge dated 7 February 2011 which allows the first and second respondents to apply to practice under a new firm of 'Abdullah Chan' effective 2 January 2011 subject to the Bar Council's approval for the first and second respondents to do so, ought to be varied to the extent that subject to Bar Council's approval, the first and second respondents are at liberty to apply to practice under a new firm which contains the name 'Abdullah' and 'Chan' but not in the exact same style and manner as the name of the dissolved firm of 'Abdullah Chan', to ensure that there are sufficient distinguishing features between the new firm and the dissolved firm of 'Abdullah Chan';

H

I

The grounds to which this is relied upon are:

(i) the name 'Abdullah' and 'Chan' despite being the surnames of the first and second respondents respectively have, after the appellant and the first and second respondents and interveners agreed to its use

as being an integral part of the firm name of their partnership under the style 'Abdullah Chan', been vested in and jointly owned by the appellant and the first and second respondents and interveners collectively, for their common benefit and constitutes part of the partnership's assets as goodwill;

(ii) the learned trial judge failed to recognise, appreciate, consider and apply the legal principles that the goodwill in the name of 'Abdullah Chan', being jointly owned by all partners of the said dissolved firm of 'Abdullah Chan', cannot be sold or utilised by any partner of the dissolved firm without the consent of all the partners and that the appellant and all the respondents (first–fourth) and interveners have the general right of having the partnership assets, including the goodwill sold for their common benefit;

(iii) that the appellant and the interveners had been unlawfully forfeited of their rights to decide by and for themselves to allow or otherwise the use of the name of the dissolved firm of 'Abdullah Chan' by the plaintiffs, which is inconsistent with the right to property as guaranteed under the Federal Constitution;

(iv) the learned trial judge ought not to be influenced nor have considered the fact that the name 'Abdullah' and 'Chan' is respectively the surname of the first and second respondents which is irrelevant to the dispute as to whether the first and second respondents are entitled to continue to use the name of the dissolved firm;

(v) the learned trial judge erred in all the circumstances of the case when he relied and in fact acted upon the irrelevant ground that the first and second respondents are facing impediments in carrying on their new practice under the name 'Abdullah Chan', which is in any event wholly and totally unsubstantiated by the affidavit evidence before the High Court; and

(vi) the learned trial judge ought to have instead ordered that the first and second respondents are at liberty to apply to practice under a new firm which contains the words 'Abdullah' and 'Chan' for as long it is not in the exact style and manner of the name of the dissolved firm of 'Abdullah Chan'. This is to ensure that there are sufficient distinguishing name features between the new firm and the dissolved firm of 'Abdullah Chan';

(b) the grounds of judgment of the learned trial judge relating to the new firm of the practice of the first and second respondents in the name 'Abdullah Chan' wherein His Lordship said will not cause confusion or mislead anyone, should be expunged, (pp 48–54 of the appeal record).

**[21]** This is because:

(a) having ruled that the use of the name 'Abdullah Chan' by the first and second respondents as the name of the their new firm is subject to the Bar Council's approval, the intervener's position is that the learned trial judge had usurped the power and discretion of the Bar Council when His Lordship decided on the issue of public confusion under s 85 of the Legal Profession Act 1976 and found that there would be no confusion when he erroneously compared the dissolved firm of 'Abdullah Chan' with the new practice of the defendant and the interveners which is named Gan Partnership; and

(b) there is no affidavit evidence to substantiate such findings in his grounds of judgment.

## THE APPEAL IN THE COURT OF APPEAL

*The respondents (the first and second respondents)*

**[22]** Taking the court order dated 7 February 2011 as starting point, it is the respondents' case that the appellant had intentionally sent a letter to the Bar Council objecting to the use of the name Abdullah Chan by the first and second respondents despite having express knowledge of the terms of the order.

**[23]** The respondents cited bad faith on the appellant's part in sending a letter to the Bar Council objecting to the use of the name consisting the term 'Abdullah Chan'.

Several instances of mala fides conduct were attributed by the respondents to the appellant, including disrupting the performance of the joint chairman and lodging a police report on the altercation both parties had.

*The appellant*

**[24]** According to the appellant, the legal partnership between the appellant and the first to fourth respondents in the name and style of 'Abdullah Chan' had no agreement or deed entered into by the parties during their partnership.

**[25]** Subsequently differences between them led to the appellant issuing a notice of dissolution to the first and second respondents dated 15 December 2010 which dissolved the partnership 'Abdullah & Chan' with effect from 31 December 2010.

As a result, the first and second respondents initiated legal proceedings as in the court below by way of originating summons.

**[26]** In the High Court, the learned trial judge declared, inter alia, that the dissolution of the partnership became effective on 31 December 2010 and a Dissolution Committee was formed. This Committee was mandated to list the partnership assets and to have them sold.

**[27]** The remaining issue before the learned trial judge therefore revolved only on one matter, ie whether the first and second respondents could use the name 'Abdullah Chan' for themselves.

**[28]** What then was the response of the appellant and the third and fourth respondents to this? Both the appellant and the third and fourth respondents (as affirmed in their counterclaim) indicated that they had no objection had the first and second respondents practised in a firm using different permutations of 'Abdullah and Chan'. But the use by the first and second respondents of the name 'Abdullah Chan' in its unabridged and unaltered form as that of their former legal firm, earned the ire of the appellant and the third and fourth respondents.

With that, the classic question of 'what is in a name' indeed becomes relevant.

**[29]** It is the appellant's case that there was no agreement between the partners of the dissolved firm of 'Abdullah Chan' with regard issue of property in the goodwill attached to the name. Thus it is the appellant's and the third and fourth respondents' case that in the absence of such an agreement, the goodwill in the name belongs to all the partners of the dissolved firm of 'Abdullah Chan' and not to any one individual partner.

Several authorities were cited in support. What, in effect, is the goodwill of the partnership?

**[30]** In this case it relates to the implicit and intangible element of reputability, character, even respectability of a company or an establishment or a partnership such as in this appeal. In this case, goodwill includes the name of the partnership which normally forms part of its asset.

**[31]** Thus the use of an erstwhile partnership name as manifested in this appeal has various consequences, depending on the nature of the goodwill.

**[32]** The test of whether a partner can use the name of the partnership after the dissolution of the firm depends on whether the goodwill of the partnership has been assigned and not whether the name of the dissolved firm carries the name of the partner who is objecting to the use of the name. As was held in *Sukhinderjit Singh Muker v Arumugam Deva Rajah* [1998] 2 MLJ 117; [1998]

A 2 CLJ 110, a partner in a dissolved partnership, in the absence of an express assignment or sale of the goodwill in his favour, has no right to use the partnership name.

B **[33]** As lucidly expressed by Arifin Jaka J in the above case:

> … The use of the firm name when a partnership is dissolved by operation of law is subject to agreement between the partners. It cannot therefore be right to say that when the partnership is dissolves the remaining partner has the right to use the firm name. This is clearly stated in *Lindley and Banks as Partnership*, (11th Ed), Lord
C Lindley explained at p 243:
>
> > If … the goodwill of the partnership business has any saleable value at all, it seems impossible to hold that on a dissolution of a partnership whether by death or otherwise, any partner can continue the old business in the old name for this own benefit, unless thee is some agreement to that effect, or at least to the effect that
D the assets are not to be sold. Such a right on his part is inconsistent with the right of the other partners to have the goodwill sold for the common benefit of all.

**[34]** Generally the goodwill of the business carried out by a partnership
E forms part of the assets to be realised on dissolution. Generally too, where the goodwill is not sold, each partner may use the name of the firm, if by doing so, he does not hold out the other partners as still being partners with him (see *Burchell v Wilde* [1900] 1 Ch 551).

F **[35]** However the issue which often arises is, to what extent a partner may use the firm name before the firm's winding up has been completed, at least insofar as where the firm name is used in order to carry on a competing business, as is manifest in this appeal.

G **[36]** The objection take by the appellant is to the use by the first and second respondents of the name 'Abdullah Chan' in that get up.

**[37]** Since there is no agreement between the partners of the dissolved firm of
H 'Abdullah Chan' as to the property in the goodwill attached to the name, the goodwill therefore belongs to all the partners of the dissolved firm of 'Abdullah Chan' and not to any one individual partner (see *Dato' Gopal Sri Ram v Dato' C Vijaya Kumar & Ors* [2006] 6 MLJ 328).

I **[38]** In simple terms, in the absence of any agreement to the contrary, the goodwill associated with the name 'Abdullah Chan' belongs to all five partners of the said dissolved firm, ie the appellant and the first to fourth respondents.

**[39]** The authority of *Sukhinderjit Singh Muker v Arumugam Devi Rajah*,

bore similar issues. In this case, the plaintiff and defendant practiced as partners in a legal firm known as 'Lovelace and Hastings'.

**[40]** There was no partnership agreement. In 1997, the plaintiff issued a notice of dissolution which was effective as at 31 July 1997. The plaintiff commenced his own practice under the name 'Muker and Associates'. The defendant chose to continue as sole proprietor of 'Lovelace and Hastings' but this was met with objection by the plaintiff. The plaintiff initiated a suit objection against the defendant.

> A partner in the dissolved partnership in the absence of an express assignment or sale of goodwill in his favour has no right to use the partnership name …

**[41]** The court in *Sukhinderjit Singh Muker*, cited the Singapore case of *Ng Teck Sim Colin v Teh Guek Ngor Engelin & Anor* [1995] 2 SLR 380 which clearly illustrated the principle above. The facts in *Ng Teck Sim* are simply these. Colin Ng who was the plaintiff, established the legal firm of 'Colin Ng & Partners' on 1 September 1988.

**[42]** One Engelin Teh (the first defendant) joined as senior partner on 1 January 1991, whilst the second defendant who joined as legal assistant earlier ie.on 1 September 1988, was made junior partner on 1 January 1991.

**[43]** The second defendant was made senior partner only on 1 January 1994. On 1 June 1994, the firm's name was changed to 'Colin Ng & Engelin'. However the said firm in the name of 'Colin Ng & Engelin' was dissolved by notice dated 20 July 1994. Since 1 August 1994, the plaintiff practiced under the name of 'Colin Ng & Partners' whilst the first and second defendants practiced under the name 'Engelin Teh & Young'.

**[44]** The question in the above case was whether the plaintiff was entitled to practice under the name 'Colin Ng & Partners' after the dissolution of 'Colin Ng & Engelin'. In a lucid statement, Lia Kew Chai J held that he could. This was how the learned judge put it:

> … In my view, the above cases deal with the scenario in which there was contractual provisions governing the assignment of goodwill upon death, retirement or dissolution. *I see them as being of little assistance to the defendants in this case, since they vehemently object to the use by the plaintiff of 'Colin Ng & Partners' as opposed to 'Colin Ng & Engelin'. which would be objectionable, for it is the latter partnership that is undergoing receivership*.
>
> Necessarily, applying the principal enunciated in these cases, the partnership assets of 'Colin Ng & Engelin' (inclusive of the goodwill attaching thereto) may not be appropriated by either party, following *David v Matthews* and *Turner v Major*.

**[45]** As is the case in the present appeal. There is no agreement nor is there any assignment or sale of the goodwill in the name of 'Abdullah Chan' in the first and second respondents' favour. The appellant therefore objects to the first and second respondents using the dissolved firm's name of 'Abdullah Chan'.

**[46]** Thus, going by the authority of *Sukhinderjit* and *Colin Ng* as illustrated, the first and second respondents are not entitled to use the name 'Abdullah Chan' for themselves.

**[47]** It is our view that the High Court order of 7 February 2011 were 'appropriated' to the first and second respondents, an asset that belongs to all five partners of the dissolved firm of 'Abdullah Chan', to the exclusion of the rights of the others, namely the appellant (as well as the third and fourth respondents).

**[48]** This order is surely contrary to the principle enunciated clearly in authorities such as *Ng Teck Sin*, *Colin* and *Sukhinderjit* as alluded to earlier. The said order offends the principle of 'the right of the other partners to have the goodwill sold for the common benefit of all'.

**[49]** In fact the Dissolution Committee of the dissolved 'Abdullah Chan' would have to consider all the assets and sell them, for otherwise who is the account for them?

A case in point is the case of *Chia Foon Tau & Anor (suing as the executor of the estate of Chong Tzu Chieh, deceased) v Lim Pey Lin* [1997] 5 MLJ 68. The facts are these.

**[50]** One partner passed away. The burning question then was, whether the surviving partner could continue running the firm using the same partnership name.

**[51]** However there are differences between this case and the present appeal. The first is that there was a partnership agreement, and the firm is dissolved and two of the previous partners of the dissolved firm sought to re-register a firm using the same name.

**[52]** The judge in *Chia Foon Tau*'s case observed that the surviving partner in the case had to account for the use of the partnership asset to the estate of the deceased partner, pursuant to s 44 of the Partnership Act 1961.

**[53]** In the present appeal, the first and second respondents were allowed by the High Court to use the name 'Abdullah Chan' without having to account for the usage of the goodwill in that name, which essentially, is a partnership asset.

**[54]** Thus the principle as regards the partnership name is fluid, depending on the factual matrix. In a different setting altogether, the partnership name was allowed to be used when the partner retired from the partnership and had sold his share in the assets to the remaining partners. The firm hummed along as before and so the firm's name remained intact (see *Morgan v Forster* (1976) 69 DLR (3d) 28 (see tab of the respondent bundle)).

**[55]** Though the learned trial judge in the present appeal cited *Burchell v Wilde* in support of his decision in favour of the first and second respondents, we find that he had misdirected himself. The underlying fact in *Burchell*'s case is different. The court in *Burchell* had found that the agreement between the partners was not for the goodwill of the firm in question to be sold, but for it to be divided between the partners. This is clear from the observation made in a passage of the judgment:

> … What does that means? It involves this, that the goodwill of the business was not to be sold for the benefit of the partners; that it was to be divided between them in so far as it was an incident to the possession of the clients' papers. That is, to my mind, a most important fact. What was to be done about the use of the name of the firm was left undecided. But if you come to the conclusion (about which there is no doubt) that the goodwill, apart from the firm name, as to which nothing was said, was to be divided between the partners, what is the position? Subject to an observation which I will make presently, it appears to me to follow that each partner could use the name of the old firm. They had become tenants in common of that asset, and each partner is entitled to enjoy that asset subject only to a limit to which I will refer presently …

**[56]** In the present appeal, we must reiterate that there is no agreement that the goodwill of 'Abdullah Chan' was to be divided between its partners, as was apparent in *Burchell*'s case.

**[57]** Thus the principle in *Burchell* that a partner can continue with the name of the dissolved firm does not apply to the facts of the present appeal.

**[58]** Thus we find that in the absence of such an agreement between the partners, the goodwill cannot be said to belong to the first and second respondents only. It remains the asset of the partnership as a whole.

**[59]** We find that the submission of the third and fourth respondents had much to recommend itself. It had, inter alia, put across in clear terms how the legal principles of goodwill in the name of 'Abdullah Chan' are jointly owned by all the partners of the dissolved firm of 'Abdullah Chan', which cannot be utilised by any one partner of the dissolved firm without the consent of all the

A partners. In fact the appellant and the third and fourth respondents are legally entitled to have the partnership assets including the goodwill sold for their common benefit.

B **[60]** The learned trial judge had overlooked the fact that the affairs of the dissolved partnership have not been fully completed. We find that the learned trial judge had not addressed his mind to the critical issues at hand, but had instead, focused on the irrelevant issue of the first and second respondents being entitled to continue to use their surnames (Abdullah Chan) in their intended new firm and that it would not cause confusion.

C

**[61]** In the circumstances, we unanimously find that the learned trial judge had misdirected himself.

D **[62]** It is also our view that until and unless the process of the winding up of the affairs of the partnership is completed, none of the partners are entitled to use the name of their erstwhile partnership.

**[63]** We therefore allow the appeal and set aside the order of the learned trial
E judge.

**[64]** We make no order as to costs. The deposit is to be refunded to the appellant.

F *Appeal allowed with no order as to costs.*

Reported by Kohila Nesan

G

H

I